IN THE CIRCUIT COURT OF TENNESSEE SIXTEENTH JUDICIAL DISTRICT AT MURFREESBORO

STATE OF TENNESSEE,)	
Plaintiff,)	NO E (0105
v.)	NO. F-68197
ZACHARY R. HENDRIXSON,)	
Defendant.)	

MEMORANDUM AND RESTITUTION ORDER

This cause came on to be heard on the 18th day of June, 2013, for the conclusion of the restitution hearing which began on April 29, 2013. The victim, James Young, testified on April 29, but there was no presentence report in the record as required by T.C.A. § 40-35-304(b), so the Court continued the proceedings and ordered the preparation of the report. Now, having considered the testimony of the victim, the presentence report, and the entire record in this cause, the Court makes the following findings of fact and conclusions of law:

I. Background

This case involves the theft of rare coins by the Defendant. The victim is a coin dealer. On March 19, 2013, the Defendant pled guilty to Theft of Property, \$10,000-\$60,000, a Class C Felony. The Defendant was ordered to serve six years at 35% as a multiple offender. (See March 19, 2013 Judgment). As to manner of service, the Defendant will serve the entire sentence on supervised State probation, consecutive to the current ten-year sentence that he is serving on an unrelated Warren County conviction.

II. Law

A Court, in conjunction with a probated sentence, may order a defendant to make restitution to the victim of the offense. *See* T.C.A. § 40-35-304(a). The amount of restitution that may be ordered is limited to the amount of the victim's "pecuniary loss," which includes all

special damages¹ and reasonable out-of-pocket expenses incurred by the victim resulting from the filing of the charges or cooperating in the investigation and prosecution of the offense. See T.C.A. § 40-35-304(e). There is no designated formula or method for the computation of restitution. State v. Smith, 898 S.W.2d 742, 747 (Tenn. Crim. App. 1994), perm. app. denied 3/6/95. The sum of restitution must be reasonable, and does not have to equal the precise pecuniary loss. Id. It is not necessary for the sentencing court to determine restitution in accordance with the strict rules of damages applied in civil cases. State v. Johnson, 968 S.W.2d 883, 887 (Tenn. Crim. App. 1997). The Court must, however, consider the defendant's financial resources and future ability to pay. See T.C.A. § 40-35-304(d). In ordering restitution, the Court must specify the amount of time and payment, and may permit payment in installments. See T.C.A. § 40-35-304(c). The Court may not establish a payment or schedule extending beyond the expiration of the defendant's sentence. See T.C.A. § 40-35-304(g)(2). The amount of restitution may be waived, adjusted, or modified at any time upon petition of the defendant, victim, or District Attorney showing that the circumstances upon which the order was entered no longer exist, or that it would otherwise be unjust to require payment as previously ordered. See T.C.A. § 40-35-304(f). Any unpaid portion of the restitution may be converted to a civil judgment. See T.C.A. § 40-35-304(h).

III. Analysis

In the case at bar, based upon the testimony of the victim and the *Coin Dealer Newsletter* (March 1, 2013 issue, Hearing Exhibit 1), the Court finds that the amount of the victim's pecuniary loss for purposes of restitution is \$60,000.00.² The presentence report revealed that

¹ "Special damages" are those which are "the actual, but not the necessary, result of the injury complained of, and which in fact follow it as a natural and proximate consequence." <u>State v. Lewis</u>, 917 S.W.2d 251, 255 (Tenn. Crim. App. 1995).

Although the proof showed that the victim's actual out-of-pocket losses were over \$60,000, the offense for which the Defendant was convicted in this case was Theft of Property, \$10,000-\$60,000. Accordingly, the Court finds that the maximum amount of restitution in this case is \$60,000.

the Defendant is married with one child, and reported no debts or assets. See Presentence Report, Pages 9-10. The Defendant is a high-school graduate, and briefly attended Motlow State Community College but did not graduate. Id. at Page 8. The Defendant has no mental or physical disabilities. Id. The Defendant has abused illegal drugs, and professed to have a "gambling problem" which resulted in "over \$10,000 worth of gambling debt [sic]." Id. at Page 3. The gambling debt led to the Defendant's prior convictions for theft and passing worthless checks. Id. In addition to the theft and worthless check convictions, the Defendant's criminal history shows convictions for Vandalism (over \$10,000), Burglary, and Driving While License Suspended. Id. at Pages 5-8. Further, the Defendant has other pending charges in other counties. Id. The Defendant's employment history shows that he has experience as a plumber's helper and sales representative for a lighting company, with incomes ranging from \$13.00 per hour (plumber's helper) to \$1,800 every two weeks (sales representative). Id. at Page 9. One of the Defendant's previous employers (the plumber) stated that "[The Defendant] has the ability to do anything but wants something for nothing. He is not able to be trusted due to his ease of stealing. I know of no other way to word it." Id. at Page 10. Nonetheless, the Defendant was able to obtain a job at Ferguson Lighting while on probation; the Defendant's salary at that job was \$1,800 every two weeks. Id. at Pages 9-10.

IV. Conclusion

Considering the Defendant's financial resources, lack of reported debts, and his proven ability to earn while on probation, the Court finds that the amount of restitution in this case will be \$60,000.00. The Defendant may pay this judgment in 72 monthly installments of \$833.33 (with the extra \$0.24 to be paid during any of these months), during the term of his six-year probation in this case. The first payment will be due by the end of the first month of the Defendant's probationary period.

IT IS SO ORDERED.

/s/ [Original Signature on File at Clerk's Office]
M. KEITH SISKIN
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Order has been delivered via U.S. Mail (to last address on file), postage prepaid, to the following:

Sean Williams, Esq.	Allyson Abbott, Esq.
Assistant Public Defender	Assistant District Attorney General
102 South Maple Street	320 West Main Street, Suite 100
Murfreesboro, TN 37130	Murfreesboro, TN 37130
On this the day of	, 20
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D	eputy Clerk